

STATE OF MICHIGAN
COURT OF APPEALS

ELIZABETH MCCLANAHAN, Personal
Representative of the Estate of JOSEPH NEIL
STARKS, a/k/a JOSEPH NEIL MCCLANAHAN,

UNPUBLISHED
January 17, 2006

Plaintiff-Appellee,

v

CLINTON COMMUNITY SCHOOL DISTRICT,

No. 256021
Lenawee Circuit Court
LC No. 02-002770-NI

Defendant-Appellant,

and

GREGORY ANTHONY LECHMANN, and BEST
CONCRETE CORPORATION, d/b/a
CROWNOVER CONCRETE & BLOCK
COMPANY,

Defendants.

Before: Murray, P.J. and Jansen and Kelly, JJ.

PER CURIAM.

Defendant Clinton Community School District appeals as of right the trial court's order denying its motion for summary disposition under MCR 2.116(C)(7) on the basis of governmental immunity. We reverse.

The decedent was killed when he was struck by a cement mixer truck after he exited a school bus. The bus was fully stopped on the right gravel shoulder of Michigan Avenue (M-12), twelve feet from the road's fog line, on the same side of the road as the child's home. After the decedent exited the bus, he proceeded toward his home, but then turned and ran in front of the bus and into the roadway where he was struck by the cement truck.

Plaintiff brought this action against defendant, alleging that it was liable for the decedent's injuries under the motor vehicle exception to governmental immunity, MCL 691.1405. Defendant moved for summary disposition under MCR 2.116(C)(7), arguing that the decedent's injuries did not result from defendant's operation of a motor vehicle and, therefore, it

was immune from liability. The trial court denied defendant's motion. Defendant argues that this ruling was made in error. We agree.

Governmental immunity is a question of law reviewed de novo. *Mack v Detroit*, 467 Mich 186, 193; 649 NW2d 47 (2002). When reviewing the denial of a motion brought under MCR 2.116(C)(7), this Court must accept all well pleaded allegations as true, unless contradicted by other evidence, and construe them in favor of the nonmoving party. *Guerra v Garratt*, 222 Mich App 285, 289; 564 NW2d 121 (1997), quoting *Baker v DEC Int'l*, 218 Mich App 249, 252-253; 553 NW2d 667 (1996). The court must consider the affidavits, depositions, admissions, and any other documentary evidence submitted by the parties to determine whether there is a genuine issue of material fact. *Id.* If no facts are in dispute, or if reasonable minds could not differ regarding the legal effect of those facts, then the question whether the claim is barred is an issue of law. *Id.*

Subject to certain exceptions, "a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function." MCL 691.1407(1). "[T]he maintenance and operation of a school bus system by a school district constitutes an immune governmental function." *Cobb v Fox*, 113 Mich App 249, 257; 317 NW2d 583 (1982). The motor vehicle exception to governmental immunity set forth in MCL 691.1405 provides:

Governmental agencies shall be liable for bodily injury and property damage resulting from the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle of which the governmental agency is owner

In *Robinson v Detroit*, 462 Mich 439; 613 NW2d 307 (2000), our Supreme Court examined the statutory requirement that a plaintiff's injuries result from the operation of a motor vehicle. The Court observed that, according to its ordinary dictionary definition, the term "result" means "'To occur or exist as a consequence of a particular cause[;] To end in a particular way[;] The consequence of a particular action, operation or course; outcome.'" *Id.* at 456, quoting *American Heritage Dictionary, Second College Ed*, p 1054. The Court stated that the "result from" standard is different than the lesser "proximate cause 'but for'" standard. *Id.* at 457 n 14. In the context of a police pursuit, the Court, observing that the motor vehicle exception must be narrowly construed, concluded that the "plaintiffs cannot satisfy the 'resulting from' language of the statute where the pursuing police vehicle did not hit the fleeing car or otherwise physically force it off the road or into another vehicle or object." *Id.* at 456-457.

In *Curtis v Flint*, 253 Mich App 555, 557; 655 NW2d 791 (2002), the plaintiff was rear-ended by another motorist after he abruptly changed lanes and stopped to allow a government emergency vehicle to pass. This Court concluded that the holding in *Robinson* was not limited to police pursuits and that, under *Robinson*, the motor vehicle exception will not apply unless there is physical contact between the government-owned vehicle and that of the plaintiff, or the government-owned vehicle physically forced the plaintiff's vehicle off the road or into another vehicle or object. *Id.* at 561-562. In that case, because the emergency vehicle was not physically involved in the collision that caused the plaintiff's injuries, this Court decided that those injuries did not "result from" the operation of a motor vehicle. *Id.* at 562.

In this case, it is undisputed that there was no physical contact between the decedent and the school bus, between the school bus and the cement truck that struck the decedent, or between the decedent and any item placed in motion by the school bus. Therefore, we conclude that the decedent's injuries did not "result from" defendant's operation of the school bus. Accordingly, the motor vehicle exception is not applicable and the trial court erred in denying defendant's motion for summary disposition.¹

Reversed.

/s/ Christopher M. Murray

/s/ Kathleen Jansen

/s/ Kirsten Frank Kelly

¹ Our resolution of this issue eliminates the necessity of addressing defendant's other issues on appeal.